to cheat had been proved. The accused tried to sell spurious trinkets as gold and offered them to N. as stolen goods, presumably because he was asking less than the trinkets would be worth if they were genuine. N. did not buy. There was no illegal contract, nor was there any question of N. having a civil cause of action. He certainly had not, for he suffered no loss, and there was no contract, legal or illegal, on which he could sue.

In *R. v. Tan Ah Seng*[4] a Court of three Judges held that a prosecution would lie for criminal misappropriation of money entrusted to the accused for a criminal purpose. I see no reason why a man should escape punishment for a crime because he has conspired with a complainant to commit the same or another crime.

I cannot consider it to be a defence for a pickpocket to prove that the watch which he stole had been stolen by the person from whom he stole it.

Mr. Butterfield referred to a note on *R. v. Verteiul and Whelan*[5] in Volume 2 of the Journal of Criminal Law. The accused were convicted of defrauding one Guylee of sums of money by representing that the money was required "to grease the wheels at the police court" or in plain English to be used for bribing.

The appeal is allowed. The order of acquittal is set aside, and the trial of Lim Cheng Soo must continue before the same Magistrate, or if this is not practicable, the trial must commence anew before another Magistrate, if the Crown decides to go on with the case.

I can make no order adverse to the other accused who were not served and who had no opportunity of being heard by me.

Retrial ordered.

F. M. S. REPORTS.

LAWSON vs. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Carey, J.) July 1, 1941]

Evidence Enactment (Cap. 10), sections 34, 114, 133, 157, 159 — Penal Code (Cap. 45), section 165 — Corroboration of accomplice — Entries in books — Principles to be applied by Court of Appeal when considering judgment in which uncorroborated evidence of accomplice has been accepted.

The appellant, an Inspector of Machinery in the Mines Department, was charged with having, on two separate occasions, received a sum of $40 as an illegal gratification from one Cheah Pak Pang, the manager of a mining Kongsi. The books of the Kongsi contained entries showing that on each of the dates charged a sum of $40 had been paid as "tea money". The prosecution established that on those dates the appellant had in fact inspected the machinery of the Kongsi. The only direct evidence that these sums of $40 had been paid to the appellant was that of Cheah Pak Pang. The books of the Kongsi were not kept by Cheah Pak Pang but by another person.

Held, that as the Magistrate had misdirected himself as to certain aspects of the evidence for the prosecution and as to the defence his acceptance of the uncorroborated evidence of Cheah Pak Pang could not be supported and the conviction must be quashed.

Cases referred to:—

(1) *R. v. Beebe*, 133 L.T.R. 738; (1925) 19 Cr. App. 22.

(2) *R. v. Clive* (1930) 22 Cr. App. R. 19.

(3) *R. v. Baskerville* (1916) 2 K.B. 658.

(4) *R. v. Howard* (1921) Cr. App. R. 177.

(5) *R. v. Whitehead* (1929) 1 K.B. 99.

(6) *R. v. Lovell* (1923) 129 L.T.R. 638.

(7) *Aung Pe v. King Emperor* I.L.R. (1937) Rang. 110.

(8) *Emperor v. Nur Ahmed* A.I.R. (1934) Cal. 7.

(9) *R. v. Koh Soon Poh* (1935) 4 M.L.J. 120.

(10) *Fuan Ah Pock v. R.* (1940) 9 M.L.J. 250.

(11) *Trowell v. P. P.* (1946) M.L.J. 41.

(12) *Deo Nandan Pershad* v. *R.* (1906) I.L.R. 33 Cal. 649.

(13) *P. P. v. Haji Ismail* (1939) F.M.S.L.R. 141.

(14) *R. v. Tate* (1908) 2 K.B. 650.

(15) *Letchumy v. P. P.* 1 Malayan Cases 129.

(16) *R. v. Mulloy* 20 Cr. App. R. 28.

(17) *R. v. Wilson* (1913) 9 Cr. App. R. 124.

(18) *Abdul Rahman v. P. P.* (1939) F.M.S.L.R. 211.

(19) *R. v. Charavanmuthu* (1930) 22 Cr. App. R. 1.

(20) *R. v. Anderson* 142 L.T. 580.

(21) *R. v. Velayuthan* (1935) M.L.J. 277.

C. D. D. Hogan (with him *C. Mills*) for the appellant.

T. T. Russell, Deputy Public Prosecutor, for Public Prosecutor.

Hogan: According to English law it is not illegal to convict on the uncorroborated evidence of an accomplice but there exists a Rule of Practice now equivalent to a Rule of Law that it is always unsafe to convict on the evidence of an accomplice unless corroborated—**R. v. Beebe**(1), **R. v. Clive**(2). Summing up must be emphatic on such danger. Evidence in corroboration must be independent testimony affecting accused by connecting or tending to connect him with crime. Hailsham Vol. IX, p. 223, para. 311, **R. v. Baskerville**(3). An accomplice cannot corroborate another, **R. v. Howard**(4). Accomplice cannot corroborate himself, **R. v. Whitehead**(5). In certain cases, namely sexual offences, according to English law evidence admissible to show consistency of story of witness but this is "not corroborative evidence" of facts [**R. v. Lovell**(6)] and does not displace rule requiring corroboration. To summarise English law it is only in exceptional cases after emphatic warning that Court upholds conviction upon the uncorroborated evidence of an accomplice.

The law in the Federated Malay States, Straits Settlements and in India is in practice the same as English law.

Evidence Enactment, section 133 and section 114 (b) embodies principles of English law and the same rule of practice applies in such cases. Section 114 sets out matter which can be considered as likely to be true. Case of **Aung Pe v. K. Emperor**(7) laid down there was no difference in law applied in British India and England therefore also no difference between law in the Federated Malay States and England.

Neither section 114 (b) nor section 133 of Evidence Enactment are to be ignored in the exercise of judicial discretion. Illustration (b) is the rule and when departed from Court should show or circumstances justify the exceptional treatment of the case—**Ameer Ali on Evidence,** 7th Edit., p. 878. Section 157, Evidence Enactment renders admissible statements made by witness at or about the time of the occurrence of the subject of the testimony. This applies to all witnesses and evidence is admissible to show consistency of the story of the witness. It is not "corroborative evidence" of the fact—Principles same as laid down in **R. v. Lovell (supra),** and **R. v. Whitehead (supra).** Indian case **Emperor v. Nur Ahmed**(8).

In **R. v. Koh Soon Poh**(9), Terrell, J., distinguished the cases of **R. v. Whitehead** and **Emperor v. Nur Ahmed** by relying on section 157, Evidence Enactment but in **Fuan Ah Pock v. R.**(10), he refers to such evidence as not usually regarded as sufficient corroboration of an accomplice's evidence within the meaning of section 115 (b) Evidence Ordinance, Section 114 (b) Evidence Enactment. Horne, J., in **Trowell v. P.P.**(11), distinguishes **R. v. Koh Soon Poh,** and held such evidence was not "corroborative evidence" in the legal sense as applied to accomplice's evidence.

There are degrees of complicity in the case of accomplices....if payment of bribe voluntary a higher degree of corroboration is required, **Deo Nandan Pershad v. R.**(12), **P.P. v. Haji Ismail**(13).

Here the alleged payment was voluntary. Accomplice here a self confessed criminal who made a practice of offering bribes—Magistrate wrong in treating such a person as belonging to a class which required little, if any, corroboration—Magistrate by his reasons showed that he had not appreciated danger of convicting upon uncorroborated evidence of an accomplice. The Magistrate wrongly treated the entries in the books relating to payments of moneys as "corroborative evidence" of the fact of payment to the appellant. The Magistrate did not appreciate that the books produced were not the books alleged to have been written by the accomplice himself and were not even admissible under section 157 of the Evidence Enactment—The Magistrate misdirected himself on the evidence of the accused when he drew an adverse inference against the accused and did not fully appreciate the defence. The Court has power to quash conviction on uncorroborated evidence of an accomplice if there has been no warning and in fact no corroboration, **R. v. Tate**(14) and even if there has been a proper warning if it thinks that the verdict is unreasonable or it cannot be supported having regard to the evidence, **R. v. Baskerville (supra), Letchumy v. P.P.**(15), **Trowell v. P.P. (supra).** Here there was no proper warning (see **R. v. Beebe** and **R. v. Clive**) and the verdict was unreasonable and cannot be supported having regard to the evidence. Wrongful admission of books containing entry of payments ground for quashing conviction **R. v. Mulloy**(16).—The defence did not receive a fair and proper consideration and was never properly considered by Magistrate which is a ground for quashing the conviction **R. v. Wilson**(17). The Magistrate's reasons disclosed that he had doubts and he should have given the appellant the benefit of the same.

He also referred to the following authorities:

Hailsham, Vol. IX, p. 222, para. 309, p. 223, para 311;

Ameer Ali 7th Edit. p. 873, 740, 741, 743, 873, 876, 878, 940;

Russell: Law relating to evidence of an accomplice correctly laid down in **P.P. v. Haji Ismail**(13).

Rule is the same as in England. Magistrate must warn himself that it is always dangerous to convict upon the uncorroborated evidence of an accomplice.

After duly warning himself Magistrate convicted.

Case of **Trowell v. P.P.**(11) distinguished. In that case Magistrate rightly or wrongly decided there was corroboration.

Where after a proper caution a Magistrate convicts, conviction will not be upset by a Court of Appeal unless the conviction is unreasonable or cannot be supported having regard to the evidence.

Archhold 1934 Edition page 328.

Halsbury Hailsham Edition, Volume 9, para. 401, page 274, states in what circumstances a Court of Appeal is justified in coming to the conclusion a conviction is unreasonable or cannot be supported having regard to the evidence.

Magistrate was wrong in coming to the conclusion there was no corroboration.

Evidence which is not admissible as corroboration in England is so admissible in this territory, Section 157 of the Evidence Enactment.

A complaint by woman or girl in a case of rape or other like offence made shortly after the alleged occurrence is corroboration, **Rex v. Velayuthan**(21); **Rex v. Koh Soon Poh**(9).

Any former statement coming within section 157 of the Evidence Enactment made by a witness is admissible as corroboration of the evidence given by such witness at the trial.

An accomplice can corroborate himself.

Entries in the Kongsi day and ledger books are corroboration.

Entries made daily by clerk in the ordinary course of business, but made on instructions and copied from rough notebook kept by manager.

Word "notes" in Magistrate's grounds of judgment can only refer to entries produced.

Entries implicate the appellant though he is not specifically named.

Hogan replied.

Carey, J.—The appellant is an Inspector of Machinery in the Mines Department and the charges allege he received two separate sums of $40 as illegal gratification, contrary to section 165 of the Penal Code, in addition to the fees payable to the Government by the Tong Yow Kongsi for the inspections carried out by the appellant.

It was unquestionably the appellant who carried out the inspections and there was opportunity to receive the gratifications from Cheah Pak Pang the Manager and Cashier of the Kongsi, the accomplice who alleges he gave them to the appellant.

The only direct evidence that the appellant received the gratifications is that of Cheah Pak Pang. The books of the Kongsi kept in the ordinary course of business showing the payment of the fees and two sums of $40 "tea-money" on the occasions in question but not mentioning the name of the person to whom they were paid are in evidence. The entries being relevant the books are admissible and also might be used to refresh the memory of Cheah Pak Pang [sections 34 and 159 (2) Evidence Enactment]. The learned Magistrate impliedly treated these books as not being corroboration of the evidence of Cheah Pak Pang. In this case, unlike that of *Rex v. Koh Soon Poh*[9], the books produced were not kept by the witness, but by another person and the note-book of the witness from which the entries were said to have been extracted was not produced. On this ground alone the Magistrate was right in holding that the books did not constitute corroboration of the testimony of Cheah Pak Pang. Care should be exercised not to extend the principle of the provisions of section 157 of the Evidence Enactment.

It is always dangerous to convict on the uncorroborated testimony of an accomplice.

Here, the Magistrate having had his mind directed to this rule of practice which has now virtually become equivalent to a rule of law, and having stated in his grounds of judgment that uncorroborated evidence of an accomplice should be treated with great caution, convicted the appellant, on the two charges on what he found to be the uncorroborated testimony of the accomplice Cheah Pak Pang.

Though the danger exists in such cases, if it is properly appreciated by a Magistrate or Judge sitting without a jury a conviction on such uncorroborated evidence will not be quashed by a Court of Appeal merely on the ground of lack of corroboration of the accomplice's evidence, but the Court of Appeal will review all the facts of the case and, if it thinks the verdict unreasonable or that it cannot be supported, having regard to the evidence, the Court will quash the conviction, *Rex v. Baskerville*[3].

There are sixteen grounds of appeal; many of them without substance.

Grounds (iii) and (xi) are as follows:—

(iii) The learned Magistrate was wrong in stating that Cheah Pak Pang "can produce notes made in the ordinary course of business as to these transactions."

(xi) The learned Magistrate completely misunderstood the defence.

The learned Magistrate's grounds of judgment are as follows:—

> "The prosecution has proved that on each of the two dates in question it was the defendant who visited the Tong Yow Kongsi at Papan to conduct the inspection of machinery (*vide* defendant's diary Ex. P. 5 under those dates) and that on each of the two dates the Manager of the Kongsi Cheah Pak Pang, the principal prosecution witness, made a reservation of $40 for the purpose of bribing the defendant (*vide* Cheah Pak Pang's oral evidence and the Kongsi s books Exs. P. 2 & 3). The question to be decided is whether these two sums of $40 reached the defendant. To show that it did so reach the defendant the prosecution relies on the uncorroborated evidence of an accomplice Cheah Pak Pang and such evidence should be treated with great caution. I have accordingly done so. Cheah Pak Pang and the defendant are not however accomplices in the popular sense of the word. They did not join, as for example, two intending murderers join in a long course of conduct towards their joint object—a course of conduct which would give each of them an extensive knowledge of the other's actions and motives and enable each of them to throw

suspicion on the other by using "inside" information so as to give the maximum verisimilitude. In this case there is only one brief moment of conspiracy possible — that when the witness Cheah Pak Pang is alleged to have handed over the money and the defendant to have accepted it. Everything turns, nevertheless on whether one can accept the word of Cheah Pak Pang that he did not himself pocket the money — instead of handing it to the defendant. He had *carte blanche* from his owners to allocate sums of money towards bribery and having such permission he would be in a position to misuse it.

2. I have carefully considered the evidence of Cheah Pak Pang. It has been suggested by the defence that in general he is an unreliable witness on such subjects as the cost of education of his children and the amount of money handled by him but both before the Commission and in this present case there appears to have been some opportunity for him to misunderstand the questions put; there was an ambiguity as to the time and circumstances about which he was questioned. It has also been suggested that he is wrong as to the time of the second inspection and that it took place in the afternoon. On this point he appears to be wrong (*vide* Ex. P. 5). But on the whole the evidence of Cheah Pak Pang did not rouse any suspicion as to its general value. On the contrary, it was given in a straightforward manner, though grudgingly. Moreover, as the counsel for the prosecution point out, this witness does not rely wholly on his memory. He can produce notes made in the ordinary course of business as to these transactions. He is further supported by the defendant's own diary in the story which he has consistently followed, namely, that the defendant paid two visits in 1937.

3. The defence, on the other hand, raised grave doubts as to the defendant's position. It was not a candid defence. It is of course possible to protest too much. But I cannot help thinking an innocent man would have resented the production of his banking account and would have endeavoured, or offered to justify every item in it. If there were anything in the story that the defendant has been trapped by a false allegation one would have expected on the part of the defendant himself some show of animus. Instead, he appeared to acquiesce in the cold legal defence which relied on a formal denial coupled with such doubts as it could throw on the adequacy of the prosecution evidence. I shall accordingly convict the defendant on both charges and take a serious view and sentence the defendant to three months' simple imprisonment on each charge, the sentences to run concurrently. I allow bail pending appeal in the sum of $800 in the defendant's own recognizances."

As regards the third ground of appeal I find it necessary to consider the following passage in the grounds of judgment:—

> "But on the whole the evidence of Cheah Pak Pang did not rouse any suspicion as to its general value. On the contrary it was given in a straightforward manner, though grudgingly. Moreover, as the counsel for the prosecution pointed out, this witness does not rely wholly on his memory. He can produce notes made in the ordinary course of business as to these transactions." The phrase "He can produce notes" suggests to my mind that he is in a position to do so, but has not actually done so. On referring to the Magistrate's notes of the closing address of the learned Assistant Legal Adviser I find the following passage — "To support story of Cheah Pak Pang there are entries made in ordinary course of business in account book — Overseer's book not produced made by Cheah Pak Pang himself and carries less weight than entries produced."

The inference to be drawn from the passage in the learned Magistrate's grounds of judgment quoted in the third ground of appeal is that, in spite of holding that Cheah Pak Pang's evidence was uncorroborated, the learned Magistrate was influenced in arriving at his decision as to the reliability of Cheah Pak Pang's evidence by the alleged ability of Cheah Pak Pang to produce notes from which he had refreshed his memory. Those notes were not produced, nor was their non-production explained. It is quite wrong therefore to presume that the memory of the witness Cheah Pak Pang was assisted thereby and it may well be that, without reliance on this alleged ability to produce the notes, the learned Magistrate would not have felt justified in placing credence on the evidence of Cheah Pak Pang. It may be that the learned Magistrate was referring to the account books of the Kongsi, but this he has not expressed. He specifically mentions "notes."

In paragraph 3 of the grounds of judgment the learned Magistrate deals with the defence of the appellant, and it was, of course, within his province to comment on the failure of the appellant to give

evidence regarding his bank account. The appellant went into the witness box and was cross-examined, but no question was put to him regarding his banking account either by his own counsel, counsel for the prosecution or by the Magistrate. The account was in evidence and there was nothing to justify the conclusion that, because he did not volunteer evidence regarding it, it should be assumed it is incriminatory. The proper conclusion would seem to be that, inasmuch as on the face of it there was nothing directly connected with the offences alleged, the learned Assistant Legal Adviser was of the opinion that there was nothing to assist the prosecution therein, and so did not question the appellant about it. I do not know in what way the learned Magistrate expected the appellant to display resentment and animus in Court at the production of his bank account, but anyhow, if there was nothing in the account of which the witness was ashamed or which he was not unable to explain, there was no necessity for any resentment or animus.

The appellant had the services of a legal practitioner before the Magistrate and presumably relied on him to conduct his case in accordance with what his trained legal knowledge dictated as being in the best interests of his client. To adopt the phraseology of the grounds of judgment "A cold legal defence coupled with such doubts as it could throw on the adequacy of the prosecution evidence" may have been advised in place of "the animated resentment" that the learned Magistrate expected.

I wonder what were "the doubts it could throw on the adequacy of the prosecution evidence" and also what is to be inferred from the initial sentence of the paragraph, "The defence..... raised grave doubts as to the defendant's position." Is it to to be implied that there were doubts in the learned Magistrate's mind as to whether or not the appellant did accept the sums alleged? If so his proper course was to give the appellant the benefit of the doubt and to acquit him.

On these considerations alone the indications are that the learned Magistrate misdirected himself as to the memory of the witness Cheah Pak Pang being supported by his notes when such notes are not in evidence and also as to the construction to be placed upon the evidence given by the appellant. Further I am not satisfied as to what the Magistrate's references to "doubts" mean.

Where the question is whether or not a magistrate or judge sitting without a jury properly directed his mind to the consideration of a relevant point of law and his reference to such direction is as meagre as in the present instance (i.e., regarding the danger of convicting on the uncorroborated evidence of an accomplice) the rest of his judgment must be unobjectionable in the matter of direction in order that the appellate Court may be satisfied as to the propriety of the direction in question.

In my opinion on grounds (iii) and (xi) alone this appeal must succeed and it is unnecessary therefore for me to consider the other grounds of appeal.

The conviction of the appellant on both charges is quashed, the sentences set aside and he is acquitted.

Appeal allowed.
Conviction quashed.

P. P. vs. KOTHANDARAMAN.

[App. Crim. Juris. (Horne, J.) June 25, 1941]

Road Traffic Enactment 1937 (17 of 1937) section 71 — Evidence Enactment (Cap. 10) section 114 (e) — Failing to conform with indication of a traffic sign — Presumption that sign was lawfully placed on road.

The respondent was charged with having failed to conform with the indication given by a Stop-Look-Go sign contrary to section 71 (b) of the Road Traffic Enactment 1937. Although there was evidence that he had deliberately driven past the sign he was acquitted, without being called on for a defence, on the ground that it was necessary for the prosecution to prove affirmatively that the sign was lawfully placed at the road junction in question, and also that it was in accordance with the requirements of the Traffic Signs Rules, 1938.

Held. on appeal, reversing the decision of the Magistrate, that the prosecution were not bound to prove as part of the case that the sign had been lawfully placed on the road and was of the prescribed type.

The presumption under section 114 (e) of the Evidence Enactment (Cap. 10) should apply in favour of the prosecution in the case of official acts provided by law.

On the 10th February, 1941, while driving a bus in Seremban the respondent slowed down at a "Stop-Look-Go" sign at the junction of two streets but passed it without actually stopping. In certain minor particulars the sign did not comply with the requirements of the Traffic Signs (Size, Colour and Type) Rules 1938, made under the Road Traffic Enactment. The respondent was charged under section 71 of the Road Traffic Enactment, the provisions of which, relevant to such charge, are as follows:—

> "71. Where..... any traffic sign being a sign for regulating the movement of traffic or indicating the route to be followed by traffic and